

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5  
77 WEST JACKSON BOULEVARD  
CHICAGO, IL 60604-3590

REPLY TO THE ATTENTION OF:

WS-15J

**MEMORANDUM**

**DATE:** December 22, 2004

**SUBJECT:** Regional Determinations for the Permitting Approach Process used in the proposed General Permit To Discharge Under the Wisconsin Pollutant Discharge Elimination System (WPDES Permit No. WI-S050075-1); Municipal Separate Storm Sewers

**FROM:** Brian Bell  
Regional Storm water Coordinator

**THRU:** Charlene Denys, Acting Chief  
NPDES Programs Branch

**TO:** File

The purpose of this memo is to document the regional determination that the permitting approach used in the proposed General Permit To Discharge Under the Wisconsin Pollutant Discharge Elimination System (WPDES Permit No. WI-S050075-1) for Storm Water Discharges From Municipal Separate Storm Sewer Systems is at least as stringent as the federal approach.

**Background**

On December 8, 1999, U.S. EPA published Phase II of the national storm water regulations. This regulation expanded the scope of the storm water program to require small municipal separate storm sewer systems (MS4) in urbanized areas and small construction sites to apply for and obtain NPDES permits for their storm water discharges.

**Federal Permit Application Requirements**

The federal regulations at 40 CFR 122.34(d)(1)(i) - (iii) describe the permit application process for small MS4s. Specifically, the small MS4 operator must include with his permit application (either a notice of intent for coverage under a general permit or an individual permit application)

- the best management practices (BMPs) that will be implemented for each of the storm water minimum control measures at 40 CFR 122.34(b)(1) through (b)(6);
- the measurable goals for each of the BMPs including, where appropriate, the months and years in which the required actions will be taken, including interim milestones and the

- frequency of the action;
  - the person(s) responsible for implementing or coordinating the storm water program.
- There is no requirement for review and approval of BMPs by the NPDES permitting authority prior to implementation.

### **Wisconsin Permit Application Requirements and Permit Conditions**

WDNR's application requirements are found in Chapter NR 216.03 of the Wisconsin Administrative Code and Section 1.6 of the draft MS4 general permit. Operators of small MS4s are required to submit a notice of intent (NOI) to the Department. Coverage does not become effective until the department sends the owner or operator a letter expressly authorizing coverage under the permit. The requirement differs from the federal requirement in that the specific information related to BMPs, measurable goals and time frames, and responsible parties are not required with the NOI. Instead, section 3 of the permit contains a compliance schedule which details when the requirements of the permit must be met. In addition, the department requires the operator to submit the BMPs for review and approval prior to implementation.

Although the submission of information is delayed, Chapter NR 216.09 meets the federal requirement that the operator fully develop, implement and enforce the requirements of the program within 5 years after initial permit issuance.

WDNR's approach to permitting MS4s is very logical. The operator is given time to assess storm water management practices and the program developed must be reviewed and approved by the department prior to implementation. This gives better assurances that storm water discharges will be properly managed.

According to EPA regulations at 40 CFR 123.35, the state need not adopt provisions identical to the federal regulations, but they must adopt provisions that are at least as stringent. Based on the explanation above, we believe WDNR's permitting approach is at least as stringent as the federal approach.

cc: David Soong  
Quintin White  
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